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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Twelfth session
25-29 July 1994
Item 9 of the provisional agenda

OTHER MATTERS INCLUDING MEETINGS AND SEMINARS AND THE VOLUNTARY FUND FOR INDIGENOUS POPULATIONS

Information received from indigenous peoples' and non-governmental organizations

Introduction

1. Under its agenda item 9, the Working Group on Indigenous Populations considers other matters which do not fall directly under the two principal items dealing with standard-setting activities and review of developments. These questions include the presentation of information about recent meetings and seminars, relevant studies and research, and the activities of the Voluntary Fund for Indigenous Populations.

2. In this regard, information has been received from indigenous and non-governmental organizations concerning the study prepared by the Special Rapporteur, Ms. Erica-Irene Daes, on the heritage of indigenous peoples (E/CN.4/Sub.2/1993/28) and submitted to the Sub-Commission at its forty-fifth session. The Sub-Commission, in its resolution 1993/44 of 26 August 1993, requested the Special Rapporteur to expand her study and draft guidelines and principles for the protection of the heritage of indigenous peoples. The expanded study is contained in document E/CN.4/Sub.2/1994/31. Information received on this question is contained in the present document. Further information under this item of the agenda will be contained in addenda to the document.

I. INDIGENOUS PEOPLES EARTH CHARTER*

Declaration

We the indigenous peoples walk to the future in the footprints of our ancestors.

From the smallest to the largest living being, from the four directions. From the air, the land and the mountains, the creator has placed us, the indigenous peoples upon our mother the earth.

The footprints of our ancestors are permanently etched upon the lands of our peoples.

We, the indigenous peoples maintain our inherent right to self-determination. We have always had the right to decide our own forms of government, to use our own ways to raise and educate our children, to our own cultural identity without interference.

We continue to maintain our rights as people despite centuries of deprivation, assimilation and genocide.

We maintain our inalienable rights to our lands and territories, to all of our resources - above and below - and to our waters. We assert our ongoing responsibility to pass these on to future generations.

We cannot be removed from our lands. We, the indigenous peoples, are connected by the circle of life to our lands and environments.

We, the indigenous peoples, walk to the future in the footprints of our ancestors.

Human rights and international law

1. We demand the right to life.

2. International law must deal with the collective human rights of indigenous peoples.**

3. There are many international instruments which deal with the rights of individuals but there are no declarations to recognize collective human rights. Therefore, we urge Governments to support the United Nations Working Group on Indigenous Peoples' (UNWGIP) Universal Declaration of Indigenous Rights, which is presently in draft form.

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* Adopted at the Kari Oca Conference, 25-30 May 1992.

** Please note for the purposes of the Declaration and this statement any use of the term "indigenous peoples" also includes tribal peoples.

4. There exist many examples of genocide against indigenous peoples. Therefore, the Convention against Genocide must be changed to include the genocide of indigenous peoples.

5. The United Nations should be able to send indigenous peoples' representatives, in a peace-keeping capacity into indigenous territories where conflicts arise. This would be done at the request and consent of the indigenous peoples concerned.

6. The concept of terra nullius must be eliminated from international law usage. Many State governments have used internal domestic laws to deny us ownership of our own lands. These illegal acts should be condemned by the world.

7. Where small numbers of indigenous peoples are residing within State boundaries, so-called democratic countries have denied indigenous peoples the right of consent about their future, using the notion of majority rules to decide the future of indigenous peoples. Indigenous peoples' right of consent to projects in their areas must be recognized.

8. We must promote the term "indigenous peoples" at all forums, the use of the term "indigenous peoples" must be without qualifications.

9. We urge governments to ratify International Labour Organisation (ILO) Convention 169 to guarantee an international legal instrument for indigenous peoples. (note: group 2 only)

10. Indigenous peoples' distinct and separate rights within their own territories must be recognized.

11. We assert our right to free passage through State imposed political boundaries dividing our traditional territories. Adequate mechanisms must be established to secure this right.

12. The colonial systems have tried to dominate and assimilate our peoples. However, our peoples remain distinct despite this pressure.

13. Our indigenous governments and legal systems must be recognized by the United Nations, State governments and international legal instruments.

14. Our right to self-determination must be recognized.

15. We must be free from population transfer.

16. We maintain our right to our traditional way of life.

17. We maintain our right to our spiritual way of life.

18. We maintain the right to be free from pressures from multinational (transnationals) corporations upon our lives and lands. All multinational (transnationals) corporations which are encroaching upon indigenous lands should be reported to the United Nations transnational office.

19. We must be free from racism.

20. We maintain the right to decide the direction of our communities.

21. The United Nations should have a special procedure to deal with issues arising from violations of indigenous treaties.

22. Treaties signed between indigenous peoples and non-indigenous peoples must be accepted as treaties under international law.

23. The United Nations must exercise the right to impose sanctions against governments that violate the rights of indigenous peoples.

24. We urge the United Nations to include the issue of indigenous peoples in the agenda of the World Conference of Human Rights to be held in 1993. The work done so far by the United Nations Inter-American Commission of Human Rights and the Inter-American Institute of Human Rights should be taken into consideration.

25. Indigenous peoples should have the right to their own knowledge, language, and culturally appropriate education, including bicultural and bilingual education, through recognizing both formal and informal ways, the participation of family and community is guaranteed.

26. Our health rights must include the recognition and respect of traditional knowledge held by indigenous healers. This knowledge, including our traditional medicines and their preventive and spiritual healing powers must be recognized and protected against exploitation.

27. The world court must extend its powers to include complaints by indigenous peoples.

28. There must be a monitoring system from this Conference to oversee the return of delegates to their territories. The delegates should be free to attend and participate in international indigenous conferences.

29. Indigenous women's rights must be respected. Women must be included in all local, national, regional and international organizations.

30. The above-mentioned historical rights of indigenous peoples must be guaranteed in national legislation.

Lands and territories

31. Indigenous peoples were placed upon our mother, the earth by the Creator. We belong to the land. We cannot be separated from our lands and territories.

32. Our territories are living totalities in permanent vital relation between human beings and nature. Their possession produce the development of our culture. Our territorial property should be inalienable, unceasable and not denied title. Legal economic and technical backup are needed to guarantee this.

33. Indigenous peoples' inalienable rights to land and resources confirm that we have always had ownership and stewardship over our traditional territories. We demand that this be respected.

34. We assert our rights to demarcate our traditional territories. The definition of territory includes space (air), land and sea. We must promote a traditional analysis of traditional land rights in all our territories.

35. Where indigenous territories have been degraded, resources must be made available to restore them. The recuperation of those affected territories is the duty of the respective jurisdiction in all nation States which cannot be delayed. Within this process of recuperation the compensation for the historical ecological debt must be taken into account, nation States must revise in depth the agrarian, mining and forestry policies.

36. Indigenous peoples reject the assertion of non-indigenous laws onto our lands. States cannot unilaterally extend their jurisdiction over our lands and territories, the concept of terra nullius should be forever erased from the law books of States.

37. We, as indigenous peoples, must never alienate our lands. We must always maintain control over the land for future generations.

38. If a non-indigenous government, individual or corporation wants to use our lands, then there must be a formal agreement which sets out the terms and conditions. Indigenous peoples maintain the right to be compensated for the use of their lands and resources.

39. Traditional indigenous territorial boundaries, including the waters, must be respected.

40. There must be some control placed upon environmental groups who are lobbying to protect our territories and the species within those territories. In many instances, environmental groups are more concerned about animals than human beings. We call for indigenous peoples to determine guidelines prior to allowing environmental groups into their territories.

41. Parks must not be created at the expense of indigenous peoples. There is no way to separate indigenous peoples from their lands.

42. Indigenous peoples must not be removed from their lands in order to make it available to settlers or other forms of economic activity on their lands.

43. In many instances, the numbers of indigenous peoples have been decreasing due to encroachment by non-indigenous peoples.

44. Indigenous peoples should encourage their peoples to cultivate their own traditional forms of products rather than to use imported exotic crops which do not benefit local peoples.

45. Toxic wastes must not be deposited in our areas. Indigenous peoples must realize that chemicals, pesticides and hazardous wastes do not benefit the peoples.

46. Traditional areas must be protected against present and future forms of environmental degradation.

47. There must be a cessation of all uses of nuclear material.

48. Mining of products for nuclear production must cease.

49. Indigenous lands must not be used for the testing or dumping of nuclear products.

50. Population transfer policies by State Governments in our territories are causing hardship. Traditional lands are lost and traditional livelihoods are being destroyed.

51. Our lands are being used by State Governments to obtain funds from the World Bank, the International Monetary Fund, the Asian-Pacific Development Bank and other institutions which have led to a loss of our lands and territories.

52. In many countries our lands are being used for military purposes. This is an unacceptable use of the lands.

53. The colonizer governments have changed the names of our traditional and sacred areas. Our children learn these foreign names and start to lose their identity. In addition, the changing of the name of a place diminishes respect for the spirits which reside in those areas.

54. Our forests are not being used for their intended purposes. The forests are being used to make money.

55. Traditional activities, such as making pottery, are being destroyed by the importation of industrial goods. This impoverishes the local peoples.

Biodiversity and conservation

56. The vital circles are in a continuous interrelation in such way that the change of one of its elements affects the whole.

57. Climatic changes affect indigenous peoples and all humanity. In addition ecological systems and their rhythms are affected which contribute to the deterioration of our quality of life and increase our dependency.

58. The forests are being destroyed in the name of development and economical gains without considering the destruction of ecological balance. These activities do not benefit human beings, animals, birds and fish. The logging concessions and incentives to the timber, cattle and mining industries affecting the ecosystems and the natural resources should be cancelled.

59. We value the efforts of protection of the biodiversity but we reject to be included as part of an inert diversity which pretend to be maintained for scientific and folkloric purposes.

60. The indigenous peoples' strategies should be kept in a reference framework for the formulation and application of national policies on environment and biodiversity.

Development strategies

61. Indigenous peoples must consent for all projects in our territories. Prior to consent being obtained the people must be fully and entirely involved in any decisions. They must be given all the information about the project and its effects. Failure to do so should be considered a crime against the indigenous peoples. The person or persons who violate this should be tried in a world tribunal within the control of indigenous peoples set for such a purpose. This could be similar to the trials held after World War II.

62. We have the right to our own development strategies based on our cultural practices and with a transparent, efficient and viable management and with economical and ecological viability.

63. Our development and life strategies are obstructed by the interests of the governments and big companies and by the neo-liberal policies. Our strategies have, as fundamental condition, the existence of international relationship based on justice, equity and solidarity between the human beings and the nations.

64. Any development strategy should prioritize the elimination of poverty, the climatic guarantee, the sustainable manageability of natural resources, the continuity of democratic societies and the respect of cultural differences.

65. The global environmental facility should assign at best 20 per cent for indigenous peoples' strategies and programmes of environmental emergency, improvement of life quality, protection of natural resources and rehabilitation of ecosystems. This proposal in the case of South America and the Caribbean should be concrete in the indigenous development fund as a pilot experience in order to be extended to the indigenous peoples of other regions and continents.

66. The concept of development has meant the destruction of our lands. We reject the current definition of development as being useful to our peoples. Our cultures are not static and we keep our identity through a permanent recreation of our life conditions; but all of this is obstructed in the name of so-called developments.

67. Recognizing indigenous peoples harmonious relationship with nature, indigenous sustainable development models, development strategies and cultural values must be respected as distinct and vital sources of knowledge.

68. Indigenous peoples have been here since the time before time began. We have come directly from the Creator. We have lived and kept the earth as it was on the first day. Peoples who do not belong to the land must go out from the lands because those things (so-called "development" on the land) are against the laws of the Creator.

69. (a) In order for indigenous peoples to assume control, management and administration of their resources and territories, development projects must be based on the principles of self-determination and self-management.

(b) Indigenous peoples must be self-reliant.

70. If we are going to grow crops, these crops must feed the people. It is not appropriate that the lands be used to grow crops which do not benefit the local peoples.

70. (a) Regarding indigenous policies, State governments must cease attempts of assimilation and integration.

(b) Indigenous peoples must consent to all projects in their territories. Prior to consent being obtained, the peoples must be fully and entirely involved in any decisions. They must be given all the information about the project and its effects. Failure to do so should be considered a crime against indigenous peoples. The person or persons responsible should be tried before a world tribunal, with a balance of indigenous peoples, set up for such a purpose. This could be similar to the trials held after the Second World War.

71. We must never use the term "land claims". It is the non-indigenous people which do not have any land. All the land is our land. It is non-indigenous peoples who are making claims to our lands. We are not making claims to our lands.

72. There should be a monitoring body within the United Nations to monitor all the land disputes around the world prior to development.

73. There should be a United Nations conference on the topic of "indigenous lands and development".

74. Non-indigenous peoples have come to our lands for the purpose of exploiting these lands and resources to benefit themselves, and to the impoverishment of our peoples. Indigenous peoples are victims of development. In many cases indigenous peoples are exterminated in the name of a development programme. There are numerous examples of such occurrences.

75. Development that occurs on indigenous lands, without the consent of indigenous peoples, must be stopped.

76. Development which is occurring on indigenous lands is usually decided without local consultation by those who are unfamiliar with local conditions and needs.

77. The Eurocentric notion of ownership is destroying our peoples. We must return to our own view of the world, of the land and of development. The issue cannot be separated from indigenous peoples' rights.

78. There are many different types of so-called development: road construction, communication facilities such as electricity, telephones. These allow developers easier access to the areas, but the effects of such industrialization destroy the lands.

79. There is a worldwide move to remove indigenous peoples from their lands and place them in villages. The relocation from the traditional territories is done to facilitate development.

80. It is not appropriate for governments or agencies to move into our territories and to tell our people what is needed.

81. In many instances, the State-governments have created artificial entities such as "district council" in the name of the State-government in order to deceive the international community. These artificial entities then are consulted about development in the area. The State-governments, then, claim that indigenous peoples were consulted about the project. These lies must be exposed to the international community.

82. There must be an effective network to disseminate material and information between indigenous peoples. This is necessary in order to keep informed about the problems of other indigenous peoples.

83. Indigenous peoples should form and direct their own environmental network.

Culture, science and intellectual property

84. We feel the earth as if we are within our mother. When the earth is sick and polluted, human health is impossible to heal ourselves, we must heal the planet and to heal the planet we must heal ourselves.

85. We must begin to heal from the grass roots level and work towards the international level.

86. The destruction of the culture has always been considered an internal, domestic problem within national States. The United Nations must set up a tribunal to review the cultural destruction of the indigenous peoples.

87. We need to have foreign observers come into our indigenous territories to oversee national State elections to prevent corruption.

88. The human remains and artifacts of indigenous peoples must be returned to their original peoples.

89. Our sacred and ceremonial sites should be protected and considered as the patrimony of indigenous peoples and humanity. The establishment of a set of legal and operational instruments at both national and international levels would guarantee this.

90. The use of existing indigenous languages is our right. These languages must be protected.

91. States that have outlawed indigenous languages and their alphabets should be censored by the United Nations.

92. We must not allow tourism to be used to diminish our culture. Tourists come into the communities and view the people as if indigenous peoples were part of a zoo. Indigenous peoples have the right to allow or to disallow tourism within their areas.

93. Indigenous peoples must have the necessary resources and control over their own education systems.

94. Elders must be recognized and respected as teachers of the young people.

95. Indigenous wisdom must be recognized and encouraged.

96. The traditional knowledge of herbs and plants must be protected and passed on to future generations.

97. Traditions cannot be separated from land, territory or science.

98. Traditional knowledge has enabled indigenous peoples to survive.

99. The usurping of traditional medicines and knowledge from indigenous peoples should be considered a crime against peoples.

100. Material culture is being used by the non-indigenous to gain access to our lands and resources, thus destroying our cultures.

101. Most of the media at this Conference were only interested in the pictures which will be sold for profit. This is another case of exploitation of indigenous peoples. This does not advance the cause of indigenous peoples.

102. As creators and carriers of civilizations which have given and continue to share knowledge, experience and values with humanity, we require that our right to intellectual and cultural properties be guaranteed and that the mechanism for each implementation be in favour of our peoples and studied in depth and implemented. This respect must include the right over genetic resources, gene banks, biotechnology and knowledge of biodiversity programmes.

103. We should list the suspect museums and institutions that have misused our cultural and intellectual properties.

104. The protection, norms and mechanisms of artistic and artisan creation of our peoples must be established and implemented in order to avoid plunder, plagiarism, undue exposure and use.

105. When indigenous peoples leave their communities, they should make every effort to return to the community.

106. In many instances, our songs, dances and ceremonies have been viewed as the only aspects of our lives. In some instances, we have been asked to change a ceremony or a song to suit the occasion. This is racism.

107. At local, national, international levels, governments must commit funds to new and existing resources to education and training for indigenous peoples. To achieve their sustainable development, to contribute and to participate in sustainable and equitable development at all levels. Particular attention should be given to indigenous women, children and youth.

108. All kinds of folkloric discrimination must be stopped and forbidden.

109. The United Nations should promote research into indigenous knowledge and develop a network of indigenous sciences.

II. THE MATAATUA DECLARATION ON CULTURAL AND INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES

In recognition that 1993 is the United Nations International Year for the World's Indigenous Peoples, the Nine Tribes of Mataatua in the Bay of Plenty region of Aotearoa (New Zealand) convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, (12-18 June 1993, Whakatane). Over 150 delegates from 14 countries attended, including indigenous representatives from Ainu (Japan), Australia, Cook Islands, Fiji, India, Panama, Peru, Philippines, Suriname, the United States and Aotearoa. The Conference met over six days to consider a range of significant issues, including: the value of indigenous knowledge, biodiversity and biotechnology, customary environmental management, arts, music, language and other physical and spiritual cultural forms. On the final day, the following Declaration was passed by the Plenary.

Preamble

Recognizing that 1993 is the United Nations International Year for the World's Indigenous Peoples,

Reaffirming the undertaking of the Member States of the United Nations to: "Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices." (United Nations Conference on Environmental Development (UNCED), Agenda 21 (26.4b)),

Noting the working principles that emerged from the United Nations Technical Conference on Indigenous Peoples and the Environment in Santiago, Chile from 18-22 May 1992 (E/CN.4/Sub.2/1992/31 and Add.1),

Endorsing the recommendations on culture and science from the World Conference of Indigenous Peoples on Territory, Environment and Development (Kari-Oca, Brazil, 25-30 May 1992),

WE

Declare that indigenous peoples of the world have the right to self-determination, and in exercising that right must be recognized as the exclusive owners of their cultural and intellectual property;

Acknowledge that indigenous peoples have a commonality of experiences relating to the exploitation of their cultural and intellectual property;

Affirm that the knowledge of the indigenous peoples of the world is of benefit to all humanity;

Recognize that indigenous peoples are capable of managing their traditional knowledge themselves, but are willing to offer it to all humanity provided their fundamental rights to define and control this knowledge are protected by the international community;

Insist that the first beneficiaries of indigenous knowledge (cultural and intellectual property rights) must be the direct indigenous descendants of such knowledge;

Declare that all forms of discrimination and exploitation of indigenous peoples, indigenous knowledge and indigenous cultural and intellectual property rights must cease.

1. Recommendations to indigenous peoples

In the development of policies and practices, indigenous peoples should:

1.1 Define for themselves their own intellectual and cultural property.

1.2 Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples' intellectual and cultural property rights.

1.3 Develop a code of ethics which external users must observe when recording (visual audio, written) their traditional and customary knowledge.

1.4 Prioritize the establishment of indigenous education, research and training centres to promote their knowledge of customary environmental and cultural practices.

1.5 Reacquire traditional indigenous lands for the purpose of promoting customary agricultural production.

1.6 Develop and maintain their traditional practices and sanctions for the protection, preservation and revitalization of their traditional intellectual and cultural properties.

1.7 Assess existing legislation with respect to the protection of antiquities.

1.8 Establish an appropriate body with appropriate mechanisms to:

(a) Preserve and monitor the commercialism or otherwise of indigenous cultural properties in the public domain;

(b) Generally advise and encourage indigenous peoples to take steps to protect their cultural heritage;

(c) Allow a mandatory consultative process with respect to any new legislation affecting indigenous peoples' cultural and intellectual property rights.

1.9 Establish international indigenous information centres and networks.

1.10 Convene a Second International Conference (Hui) on the Cultural and Intellectual Property Rights of Indigenous Peoples to be hosted by the Coordinating Body for the Indigenous Peoples Organizations of the Amazon Basin (COICA).

2. Recommendations to States, national and international agencies

In the development of policies and practices, States, national and international agencies must:

2.1 Recognize that indigenous peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge.

2.2 Recognize that indigenous peoples also have the right to create new knowledge based on cultural traditions.

2.3 Note that existing protection mechanisms are insufficient for the protection of indigenous peoples' cultural and intellectual property rights.

2.4 Accept that the cultural and intellectual property rights of indigenous peoples are vested with those who created them.

2.5 Develop in full cooperation with indigenous peoples an additional cultural and intellectual property rights regime incorporating the following:

- Collective (as well as individual) ownership and origin;
- Retroactive coverage of historical as well as contemporary works;
- Protection against debasement of culturally significant items;
- Cooperative rather than competitive framework;
- First beneficiaries to be the direct descendants of the traditional guardians of that knowledge;
- Multigenerational coverage span.

Biodiversity and customary environmental management

2.6 Indigenous flora and fauna is inextricably bound to the territories of indigenous communities and any property right claims must recognize their traditional guardianship.

2.7 Commercialization of any traditional plans and medicines of indigenous peoples must be managed by the indigenous peoples who have inherited such knowledge.

2.8 A moratorium on any further commercialization of indigenous medicinal plants and human genetic materials must be declared until indigenous communities have developed appropriate protection mechanisms.

2.9 Companies and institutions, both governmental and private, must not undertake experiments or commercialization of any biogenetic resources without the consent of the appropriate indigenous peoples.

2.10 Prioritize settlement of any outstanding land and natural resources claims of indigenous peoples for the purpose of promoting customary, agricultural and marine production.

2.11 Ensure current scientific environmental research is strengthened by increasing the involvement of indigenous communities and of customary environmental knowledge.

Cultural objects

2.12 All human remains and burial objects of indigenous peoples held by museums and other institutions must be returned to their traditional areas in a culturally appropriate manner.

2.13 Museums and other institutions must provide, to the country and indigenous peoples concerned, an inventory of any indigenous cultural objects still held in their possession.

2.14 Indigenous cultural objects held in museums and other institutions must be offered back to their traditional owners.

3. Recommendations to the United Nations

In respect for the rights of indigenous peoples, the United Nations should:

3.1 Ensure the process of participation of indigenous peoples in United Nations fora is strengthened so their views are fairly represented.

3.2 Incorporate the Mataatua Declaration in its entirety in the United Nations study on cultural and intellectual property of indigenous peoples.

3.3 Monitor and take action against any States whose persistent policies and activities damage the cultural and intellectual property rights of indigenous peoples.

3.4 Ensure that indigenous peoples actively contribute to the way in which indigenous cultures are incorporated into the 1995 United Nations International Year of Culture.

3.5 Call for an immediate halt to the ongoing "Human Genome Diversity Project" (HUGO) until its moral, ethical, socio-economic, physical and political implications have been thoroughly discussed, understood and approved by indigenous peoples.

4. Conclusion

4.1 The United Nations, international and national agencies and States must provide additional funding to indigenous communities in order to implement these recommendations.